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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,837	11/02/2001	Mark Alan Burazin	14,923C	3530

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EXAMINER

HUG, ERIC J

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 11/29/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
10/015,837	BURAZIN ET AL.	
Examiner	Art Unit	
Eric Hug	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2001.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-159 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-61, 79, 100-103 and 111-159 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: 27 (absorbent tissue product), 145 (primary pattern), 64 (circular primary pattern).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "44a" and "44b" have both been used to designate the same upper warp in Figure 8.

Figure 9 is objected to because it fails to show the contrast between the white floats and the gray intermediate knuckles and shutes as described in the specification on page 27. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 31-61 and 111-159 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims pertain to a second embodiment whereby a first elevated strand in a first background region becomes a second elevated strand in a second background region rather than becoming a second depressed region, as described in the first embodiment. Similarly, a first depressed region in the first background region become a second depressed region in the second background region rather than becoming a second elevated strand, as described in the first embodiment. Some support for the claimed subject matter is given in the description of Figure 8. This given information is insufficient to determine the structure of a woven fabric and the tissue product made therefrom. All of the remaining disclosure and figures, except for Figure 8, pertain to first claimed embodiment, whereby elevated strands become depressed at a transition region and depressed strands become elevated at a transition region. The woven fabric of second claimed embodiment will have a different structure and appearance, and different depths in the transition regions than the woven fabric of the first claimed embodiment. Similarly, the tissue product of the second embodiment will have a different texture than the tissue of the first

embodiment. There is no other information regarding the second claimed embodiment.

Accordingly, the limitations given in dependent claims have no support in the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11, 30, 41, 61, 79, 103, 128, and 152 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 11, 41, 79, and 128, the phrase "wherein the transition region is filled" is undefined. It is uncertain what is meant by "filled". Regarding claims 30, 61, 103, and 152, the phrase "non-macroscopically monoplanar" is undefined. It is uncertain what feature of the fabric structure is considered to be non-macroscopically monoplanar.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 -31 of copending Application No. 10/015,838. Claims 31-61 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-63 of copending Application No. 10/015,838. Although the conflicting claims are not identical, they are not patentably distinct from each other. The claims of the instant application are directed to a woven fabric having strands extending in a cross-machine direction and a machine direction. The claims of copending Application No. 10/015,837 are directed to a woven fabric having strands extending in a first-direction and a second-direction. Since a woven fabric must have strands extending in a cross-machine direction, a machine direction, or at an angle thereto, the orientation of the strands is an obvious feature, thus the claims are not patentably distinct.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 100-102 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 54-56 of copending Application No. 10/015,849. Although the conflicting claims are not identical, they are not patentably distinct from each other, because the tissues that are formed in the two applications have the same structure. Both are made with fabrics having alternating parallel elevated and depressed regions structured so that at a transition region between two background regions, a first elevated region in a first background region becomes a second depressed region in a second

background region, and a first depressed region in the first background region become a second elevated region in the second background region.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Allowable Subject Matter*

Claims 62-78, 80-99, and 104-110 are allowed.

The claims are allowed, because the prior art does not disclose a method of making a tissue product by depositing papermaking fibers onto a woven fabric having elevated floats and depressed sinkers, whereby at a transition region in the fabric, a first elevated float in a first background region becomes a second depressed sinker in a second background region and a first depressed sinker in the first background region become a second elevated float in the second background region, and whereby the elevated floats and depressed sinkers run parallel in an alternating fashion so that the floats are positioned between adjacent sinkers and the sinkers are positioned between adjacent floats. With regards to claims 1-30, the prior art does not disclose or suggest the claimed woven sculpted fabric, or with regards to claims 100-102, the prior art does not disclose or suggest a tissue product made using the claimed fabric. The claimed fabric imparts a surface structure and texture that distinguishes the claimed tissue from prior art tissues, while also providing a tissue with uniform density instead of a tissue with compacted regions.

Prior art fabrics for making tissue webs may comprise a base fabric with a textured pattern woven therein (e.g. Chiu, US 5,429,686), or comprise weave patterns that provide for

three-dimensional pockets (e.g. Quigley et al., US 5,520,225), or comprise weave patterns having elevated knuckles at the surface (e.g. Kaufman et al., US 5,832,692), or comprise resinous structures elevated from the surface of a base fabric (e.g. Trokhan, various patents). Only Hay et al (see citation below) discloses making a woven fabric with long floats and textured patterns without using additional yarns or materials and without forming pockets that affect the tissue density. These prior art fabrics result in tissue papers with different structures than that of the present invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kloeckener (US 2,086,505) discloses a woven fabric for making tissue having extra warp threads woven as floats to form a pattern.

Thompson (US 4,423,755) discloses a woven papermaker's fabric having long floats at the paper-contacting surface that are interrupted only at the binding points of the weave.

Borel (US 4,739,803) discloses a woven papermaking fabric having alternating transverse threads reaching to the paper-contacting surface.

Quigley (US 5,713,397) discloses a through air drying fabric for tissue having machine direction yarns arranged side-by-side and raised as floats to form a pattern.

Hay et al (US 6,237,644) discloses a woven tissue forming fabric that imparts a pattern, whereby the pattern is formed in the fabric without using additional yarns or other processing steps. The pattern is formed from adjacent floats of different length.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Hug whose telephone number is 703 308-1980. The examiner can normally be reached on Monday through Friday, 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0651.



jeh  
November 22, 2002

  
STEVEN P. GRIFFIN  
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TECHNOLOGY CENTER 1700